

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

OLEWASAMI BROWN,  
Plaintiff,  
v.  
CITY OF OAKLAND, et al.,  
Defendants.

NO. C03-1141 TEH

ORDER RE DISCLOSURE OF  
DOCUMENTS RELATING TO  
OFFICER AND DEFENDANT  
JOHN L. GUTIERREZ

This matter comes before the Court over a discovery dispute about police personnel files. At the June 6, 2005 Case Management Conference, the Court ordered that Defendants submit for *in camera* review all Oakland Police Department (“OPD”) Internal Affairs Department (“IAD”) complaint files pertaining to Officer and Defendant John L. Gutierrez (“Gutierrez”). Defendants delivered the documents to the Court on September 13, 2005. This Court ordered further briefing on November 8, 2005, to develop the appropriate legal standard to be applied in determining which, if any, documents should be disclosed to Plaintiff. Following the order, the parties each submitted briefs in late November 2005.

After careful consideration of both parties’ written arguments, and review of the documents, the Court ORDERS the production of certain documents as set forth below.

1     **I.     BACKGROUND**

2           On March 17, 2003, Plaintiff Olewasami Brown filed an action under 42 U.S.C.  
3 section 1983 alleging that he was subject to unlawful treatment, including excessive force,  
4 unlawful search and seizure, and discrimination, by OPD police officers on March 16, 2001.  
5 Plaintiff alleges that he was unlawfully stopped by California Highway Patrol (“CHP”)  
6 officers based on a falsified warrant. Plaintiff further asserts that the City of Oakland  
7 (“City”) is liable for the OPD officers’ conduct.

8           The events giving rise to this action are in dispute. On March 16, 2001, CHP officers  
9 stopped Plaintiff in Contra Costa County while he was driving a vehicle. Plaintiff argues that  
10 the stop was based on a deficient warrant because he was never a bona fide suspect in a  
11 murder case. However, the City asserts that the CHP had an independent basis to initiate the  
12 auto stop based on Plaintiff’s illegal driving. The City further asserts that the officers had a  
13 valid search warrant (which included Plaintiff’s vehicle) based on the findings of a narcotics  
14 investigation conducted by Gutierrez in 2001.

15           When the CHP officers observed Plaintiff reaching toward the middle console area,  
16 the officers ordered Plaintiff out of his car. Plaintiff was removed from his vehicle, and the  
17 City alleges that CHP officers found a fully loaded semi-automatic 45 caliber weapon in the  
18 middle console. Plaintiff admits that there was a firearm in the vehicle but denies that the  
19 weapon was loaded and claims that the officers planted the bullets. Plaintiff claims that he  
20 saw Gutierrez drive his vehicle (it is unclear whether Plaintiff means Plaintiff’s vehicle or  
21 Gutierrez’s vehicle) off the road (apparently with the weapon found in the console) and that  
22 subsequent to this, the gun was discovered loaded.

23           Plaintiff was arrested for violating California Penal Code section 12021, possession of  
24 a firearm by a convicted felon. Plaintiff claims that in the course of arresting him, some of  
25 the officers assaulted and battered Plaintiff, including placing him in a choke hold. Plaintiff  
26 further asserts that Gutierrez, in the course of the arrest, made comments that were insulting  
27 to Plaintiff’s wife (both Plaintiff and his wife are African-American), to African-American  
28 people in general, and African-American women in particular. Plaintiff spent one year in jail

1 and was released on March 16, 2002, after the Alameda County District Attorney dismissed  
2 the criminal case against Plaintiff.

3  
4 **II. DISCUSSION**

5 The legal standard applicable to the determination of which, if any, documents should  
6 be disclosed to Plaintiff is a balancing of the Plaintiff's interests (i.e., his need for the  
7 information) against the privacy rights of the police officers involved and the interests of the  
8 City in protecting confidential information. *Soto v. City of Concord*, 162 F.R.D. 603, 616  
9 (N.D. Cal. 1995). The balancing test should be "*moderately pre-weighted in favor of*  
10 *disclosure*" because of the importance of civil rights litigation. *Kelly v. City of San Jose*, 114  
11 F.R.D. 653, 661 (N.D. Cal. 1987); *see also Soto*, 162 F.R.D. at 616 (in balancing the  
12 competing interests, the "privacy interests must be balanced against the great weight afforded  
13 to federal law in civil rights case against police departments").

14 Courts in the Ninth Circuit that have considered the competing interests of civil rights  
15 plaintiffs and police departments have generally ordered disclosure of documents subject to a  
16 protective order. *See, e.g., Gordon v. City & County of S.F.*, 2004 U.S. Dist. LEXIS 20021,  
17 \*9-10 (N.D. Cal. Apr. 30, 2004) (balancing the competing interests of the civil rights plaintiff  
18 and the police department and finding that production of documents subject to a protective  
19 order should safeguard the competing interests); *Soto*, 162 F.R.D. at 617 (applying the  
20 balancing test and finding that the plaintiff's interest in obtaining the information contained  
21 in the police personnel files outweighs any invasion of the defendants' privacy rights,  
22 "particularly under the limitations of a carefully crafted protective order"); *Martinez v. City*  
23 *of Stockton*, 132 F.R.D. 677, 683 (E.D. Cal. 1990) (balancing the privacy interests of the  
24 police officers against the need for discovery and permitting the discovery of personnel  
25 records subject to a protective order); *Kelly*, 114 F.R.D. at 661-62 (adopting a balancing test  
26 that is moderately pre-weighted in favor of disclosure and finding that the interests of law  
27 enforcement are less threatened when disclosure is subject to a protective order).

In addition, disclosure should be limited to complaint files that are relevant to the claims that Plaintiff has asserted in the complaint. *See Miller v. Pancucci*, 141 F.R.D. 292, 296 (C.D. Cal. 1992) (“If the requested information is not relevant to the case at hand, or reasonably calculated to lead to the discovery of admissible evidence, the inquiry ends.”). Information contained in documents subject to disclosure that are unrelated to Plaintiff’s claims should be redacted prior to disclosure to Plaintiff. *Cf. Gordon*, 2004 U.S. Dist. LEXIS 20021 at \*12 (finding that in addition to a protective order, redaction of information can adequately protect the police department’s interests).

Plaintiff seeks discovery of personnel records of Gutierrez related to complaints and discipline. Plaintiff seeks these records to determine whether complaints have been lodged against Gutierrez as to excessive force, false warrants/arrests, and bias. After careful review of the documents submitted by the City, the Court finds that most documents have insufficient relevance to Plaintiff’s claims. The documents that are sufficiently relevant to Plaintiff’s claims have been reviewed and information unrelated to Plaintiff’s request for complaints against Gutierrez have been redacted to protect the interests of the police department.

### III. CONCLUSION

Based on the above considerations, the Court ORDERS that the following documents should be disclosed to Plaintiff subject to a protective order (as discussed below):

#### Bates Numbers

OAK 2851-2852:	Letter to Plaintiff re: incident
OAK 2862-2877:	General order re: use of force
OAK 2880-2891:	Training bulletin re: use of non-lethal force
OAK 2892-2893:	Rules re: professional conduct
OAK 2923-2936:	Report of IAD re: incident
OAK 2937:	Memo re: incident
OAK 2938-2939:	Photo of Plaintiff

1 These documents have been redacted by the Court.


2 IT IS FURTHER ORDERED that the parties meet and confer regarding an  
3 appropriate protective order. The parties are to craft a protective order and submit it to the  
4 Court within **10 calendar days** of the date of this Order.

5 At such time as the Court receives an appropriate protective order, the Court will  
6 release to Plaintiff a copy of the redacted documents that the Court has ordered disclosed.  
7 Defendants shall receive a copy of the redacted documents as well.

8 Defendants shall make appropriate arrangements with the Court's deputy clerk for the  
9 return of the lodged documents.

10  
11 **IT IS SO ORDERED.**

12  
13 Dated: 02/28/06

  
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THELTON E. HENDERSON, JUDGE  
UNITED STATES DISTRICT COURT